

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DIMITRIY SHIROKOV, on behalf of himself  
and all others similarly situated,

Plaintiff

v.

DUNLAP, GRUBB & WEAVER, PLLC; US  
COPYRIGHT GROUP; THOMAS DUNLAP;  
NICHOLAS KURTZ; GUARDALEY,  
LIMITED; and ACHTE/NEUNTE Boll Kino  
Beteiligungs Gmbh & Co. KG,

Defendants

Civil Action No. 10-CV-12043-GAO

ANSWER OF ACHTE/NEUNTE BOLL KINO BETEILIGUNGS GMBH & CO. KG  
TO SECOND AMENDED CLASS ACTION COMPLAINT

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Now comes the defendant, Achte/Neunte Boll Kino Beteiligungs Gmbh & Co KG  
("Achte/Neunte"), and hereby responds to the plaintiff's Second Amended Class Action  
Complaint as follows:

**INTRODUCTION**

1. This defendant denies the allegations contained in this paragraph.
2. This defendant admits that DGW is a law firm but otherwise denies the allegations contained in this paragraph.
3. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.
4. This defendant admits Guardaley monitors online instances of copyright infringement of motion pictures. This defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

5. This defendant denies the allegations contained in this paragraph.

6. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

7. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

8. This defendant denies the allegations contained in this paragraph.

9. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

10. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

11. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte. This defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

12. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

13. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

14. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

15. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

16. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

17. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

18. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

19. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

20. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

21. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

22. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

23. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

24. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

25. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

26. This defendant states that this paragraph does not contemplate a response. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

### **JURISDICTION AND VENUE**

27. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

28. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

29. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

30. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

31. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

32. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

## **PARTIES**

33. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

34. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

35. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

36. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

37. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

38. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

39. This defendant admits that it is a German Limited Partnership with its published address at Wormeserstrasse 173, D-55130 Mainz, Germany.

## **LEGAL BACKGROUND**

40. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

41. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

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57. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

### **STATEMENT OF FACTS**

#### **A. DGW Purports to Have Special Expertise in Copyright Law.**

58. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

59. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

60. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

61. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

#### **B. DGW and Dunlap Have Demonstrated an Acute Awareness of the Significance of Section 412 of the Copyright Act.**

62. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

63. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

64. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.



65. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

66. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

67. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

68. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

69. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

70. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

71. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

72. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

**C. DGW's US Copyright Group Facilitates a Business Model Based on Volume Settlements of Alleged Copyright Infringement.**

73. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

74. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

75. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

76. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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78. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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80. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

81. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

82. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

83. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

84. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

85. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

86. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

87. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

88. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

89. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**D. Achte's Failure to Timely Register Its Copyright for *Far Cry* Posed a Problem for the USCG Business Model, Which Dunlap Sought to Mask Through Fraud.**

90. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

91. This defendant admits that it is a German film production company. Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph which relate to the DGW/WSCG business model and its prior experience in the U.S. Copyright Office.

92. This defendant admits that Achte was one of the producers of *Far Cry*, a movie based on a video game of the same name. This defendant admits that Uwe Boll was the director of *Far Cry* and other films.

93. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

94. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

95. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

96. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

97. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

98. This defendant admits the allegations contained in this paragraph.

99. This defendant admits the allegations contained in this paragraph.

100. This defendant denies the allegations contained in this paragraph.

101. This defendant denies the allegations contained in this paragraph.

102. This defendant is without knowledge or information sufficient to form a belief as to the truth of the specific allegations of this paragraph but admits that the DVD release in the United Kingdom may have occurred in or about September, 2009.

103. This defendant is without knowledge or information sufficient to form a belief as to the truth of the specific allegations of this paragraph but admits that the DVD release in Italy may have occurred in or about October, 2009.

104. This defendant is without knowledge or information sufficient to form a belief as to the truth of the specific allegations of this paragraph but admits that the DVD release in the United States and Canada may have occurred in or about September, 2009.

105. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

106. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

107. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

108. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

109. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

110. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

111. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

112. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

113. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

114. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

115. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

116. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

117. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

118. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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121. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

122. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

123. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

**E. Defendants Have Used the False Copyright Registration to Provide Illusory Support for their Application of USCG's Standard Mass Settlement Strategy Against Alleged *Far Cry* Infringers.**

124. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

125. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

126. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

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128. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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131. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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134. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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136. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

137. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

138. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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140. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

141. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

142. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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146. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.



147. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

148. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

149. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

150. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

151. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

152. This defendant denies the allegations contained in this paragraph.

153. This defendant denies the allegations contained in this paragraph.

154. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

155. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

**F. Defendants Have Used Complaints and Subpoenas Supported by False Claims to Make More False Threats Directed to Class Members.**

156. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

157. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

158. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

159. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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165. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

166. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

167. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

168. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

169. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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175. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

176. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

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181. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

182. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

183. This defendant states that the referenced letter speaks for itself.

184. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

185. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

186. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

187. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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193. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

194. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

**G. Defendants Attempted to Keep Alleged Infringers in a State of Legal Limbo to Pressure Them to Settle.**

195. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

196. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

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198. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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204. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

205. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

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214. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

215. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

216. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

217. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

**H. For any Infringement of its Copyright that Commenced Prior to Valid Registration, Achte's True Remedy Is Limited to Some Fraction of \$26.99.**

218. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

219. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

220. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

221. This defendant denies the allegations contained in this paragraph.



222. This defendant denies the allegations contained in this paragraph.

223. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

224. This defendant denies the allegations contained in this paragraph.

225. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

226. This defendant denies the allegations contained in this paragraph.

227. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

### **CONCLUSION**

228. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

229. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and calls upon the plaintiff to prove same.

230. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

231. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

232. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

233. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

234. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

235. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

236. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

237. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

238. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

### **CLASS ACTION ALLEGATIONS**

239. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

240. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

241. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

242. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

243. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

244. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

245. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

246. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

247. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

248. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

249. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

250. This defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent a further response is required, defendant denies the allegations contained in this paragraph.

## **CLAIMS**

### **FIRST COUNT FOR RELIEF** **Fraudulent Misrepresentations**

251. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

252. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

253. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

254. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

255. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

256. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

257. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

258. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

259. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

260. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

261. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**SECOND COUNT FOR RELIEF**  
**Fraudulent Omissions/Nondisclosure**

262. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

263. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

264. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

265. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

266. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

267. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

268. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

269. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

270. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

271. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

272. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**THIRD COUNT FOR RELIEF**  
**Conspiracy to Commit Fraud**

273. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

274. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

275. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

276. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

277. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**FOURTH COUNT FOR RELIEF**  
**Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.***

278. 278. - 292. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against these defendants, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**FIFTH COUNT FOR RELIEF**  
**Aiding and Abetting Fraud**

293. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

294. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

295. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

296. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**SIXTH COUNT FOR RELIEF**  
**Violations of RICO, 18 U.S.C. § 1962(c)**

297. - 326. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**SEVENTH COUNT FOR RELIEF**  
**Conspiracy to Violate RICO under 18 U.S.C. § 1962(d)**

327. - 334. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**EIGHTH COUNT FOR RELIEF**  
**Negligent Misrepresentations and Omissions**

335. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

336. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

337. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

338. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

339. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

340. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

341. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

342. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

343. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.



344. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

345. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

346. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**NINTH COUNT FOR RELIEF**  
**Fraud on the Court**

347. - 355. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**TENTH COUNT FOR RELIEF**  
**Abuse of Process**

356. - 365. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**ELEVENTH COUNT FOR RELIEF**  
**Fraud on the Copyright Office**

366. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

367. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

368. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

369. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

370. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

371. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

372. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

373. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**TWELFTH COUNT FOR RELIEF**  
**Copyright Misuse**

374. - 383. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**THIRTEENTH COUNT FOR RELIEF**  
**Civil Conspiracy**

384. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

385. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

386. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

387. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

388. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

389. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

390. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**FOURTEENTH COUNT FOR RELIEF**  
**Unjust Enrichment**

391. - 396. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**FIFTEENTH COUNT FOR RELIEF**  
**Money Had and Received**

397. - 401. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**SIXTEENTH COUNT FOR RELIEF**  
**Conversion**

402. - 408. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**SEVENTEETH COUNT FOR RELIEF**  
**Constructive Trust**

409. - 413. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**EIGHTEENTH COUNT FOR RELIEF**

**Violation of Massachusetts General Laws, Chapter 93A, § 1, *et seq.***

414. This defendant incorporates herein by reference its answers to the preceding paragraphs above as if set forth fully herein.

415. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

416. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

417. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

418. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

419. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

420. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

421. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

422. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

423. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

424. This defendant denies the allegations contained in this paragraph to the extent they relate to Achte/Neunte.

**NINETEENTH COUNT FOR RELIEF**  
**Malicious Prosecution**

425. - 433. The Court has dismissed this Count because it failed to state a claim upon which relief could be granted against this defendant, thus no response is required to these paragraphs. To the extent necessary, the allegations of these paragraphs are denied.

**AFFIRMATIVE DEFENSES**

First Defense

The plaintiffs' claims are barred by the doctrine of *in pari delicto*.

Second Defense

The plaintiffs' claims are barred by the litigation privilege.

Third Defense

The plaintiffs' claims are barred by the *Noerr-Pennington* doctrine and/or the First Amendment's right to petition.

Fourth Defense

The plaintiffs' claims are barred by the doctrine of unclean hands.

Fifth Defense

The plaintiffs' claims are barred by estoppel and/or waiver.

Sixth Defense

The losses, injuries, and damages, if any, alleged were caused or contributed to by persons, entities, conditions, or events unrelated to, and/or not under the control of this defendant for which defendants cannot be held legally responsible.

Seventh Defense

The plaintiffs' claims may be barred by the applicable statutes of limitations.

Eighth Defense

The plaintiffs failed to mitigate their damages.

Ninth Defense

Defendant hereby reserves the right to assert those defenses that may become known as a result of discovery or investigation of this matter and reserve the right to rely upon any and all defenses asserted by any other defendant to this matter.

Tenth Defense

The actions complained of did not occur primarily and substantially within the Commonwealth of Massachusetts and therefore M.G.L. c. 93A does not apply.

JURY TRIAL DEMAND

This defendant requests a jury trial on all issues.

WHEREFORE, this defendant says that the plaintiff's Second Amended Class Action Complaint against it should be dismissed and that judgment should enter for this defendant, together with its costs.

Achte/Neunte Boll Kino Beteiligungs  
GmbH & Co KG

By its Attorneys,

/s/ Kevin C. Cain  
Kevin C. Cain  
BBO # 550055  
Harvey Weiner  
BBO # 519840  
PEABODY & ARNOLD LLP  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210-2261  
(617) 951-2100

Dated: April 25, 2012.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of April, 2012, I served the foregoing Answer to  
Second Amended Class Action Complaint via ECF upon counsel of record.

/s/ Kevin C. Cain  
Kevin C. Cain

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